

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

ELIZABETH HORTON,

Plaintiff,

v.

CASE NO: 2:06-CV-526-MHT

DON WILLIAMS, ET AL,

Defendants.

MOTION TO DISMISS AMENDED COMPLAINT

Comes now Defendant Gerald Shockley, individually and in his official capacity, by and through counsel, Troy King, Attorney General of Alabama, and Jack Wallace, Jr., Assistant Attorney General, to move that this Honorable Court dismiss this civil action, upon the following grounds.

1. The complaint fails to state a cause of action for which relief can be granted.
2. This Honorable Court lacks subject matter jurisdiction.
3. The Defendant asserts that he is entitled to the protections of sovereign immunity pursuant to the Eleventh Amendment to the United States Constitution and Art. I, § 14, Alabama Constitution of 1901.
4. The Defendant further asserts that he is entitled to the protections of qualified immunity and state-agent immunity which is also known in as discretionary function immunity.
5. In his official capacity, Defendant Shockley is not considered to be a person amenable to action pursuant to 42 U.S.C. § 1983.

6. An action against Defendant Shockley in his official capacity is actually an action against the State of Alabama and is barred by the Eleventh Amendment and Art. I, § 14 of the Alabama Constitution of 1901.

Respectfully submitted on this the 20th day of April, 2007.

TROY KING
ATTORNEY GENERAL

/s/ Jack Wallace, Jr.
Jack Wallace, Jr. WAL047
Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that I have, this the 20th day of April, 2007, electronically filed the foregoing with the Clerk of Court using the CM/ECF. The Clerk of Court using the CM/ECF system will send notification of this filing to the following:

Deborah M. Nickson
Attorney for Plaintiff

Charles Andrew Stewart, III
Bradley, Arant, Rose & White, LLP

William O. Butler, III
Alabama Medicaid Agency

Dorman Walker
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/s/ Jack Wallace, Jr.